

United States
Circuit Court of Appeals
For the Ninth Circuit 7

LOUIS E. GOODMAN,

Appellant,

vs.

E. C. STREET, as Trustee in Bankruptcy of the
Estate of HENRY DUFFY PLAYERS, a
Corporation, Bankrupt,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division.

FILED

NOV 30 1932

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES OF ATTORNEYS.

GOODMAN, BACHRACH & BROWNSTONE,
and GEORGE M. NAUS, Esq.,
Alexander Building, San Francisco,
California,
For Louis E. Goodman, Appellant.

REUBEN G. HUNT, Esq.,
1317 Russ Building, San Francisco,
California,
For Trustee and Appellee.

District Court of the United States, Northern
District of California, Southern Division.

At a stated term of the Southern Division of the
United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Fran-
cisco, on Friday, the 12th day of August, in the
year of our Lord one thousand nine hundred
and thirty-two.

Present: the Honorable FRANK H. KERRIGAN,
Judge.

No. 19,335-K

In the Matter of
HENRY DUFFY PLAYERS, a corp.,
in Bankruptcy.

It is ordered that the order of the referee as to
the allowance of fees to the attorney for the trus-

tee, brought to this Court for review, be and the same is hereby approved and affirmed, and that the account of the trustee be and is hereby approved, except as to the item of \$500.00 allowed to the attorney for the receiver, which said sum is disallowed and stricken from the account, all of which more fully appears in signed order this day filed.

[1*]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 19,335

In Bankruptcy.

LOUIS E. GOODMAN,

Appellant,

vs.

E. C. STREET, as Trustee in Bankruptcy of the
Estate of HENRY DUFFY PLAYERS, a
Corporation, Bankrupt,

Appellee.

In the Matter of
HENRY DUFFY PLAYERS,
a corporation, Bankrupt.

AGREED STATEMENT OF THE CASE.

(Under Equity Rule 77.)

The question presented by the appeal of Louis E. Goodman arose and was decided in the District Court as follows:

On June 6, 1930, Henry Duffy Players, a corporation, was adjudicated an involuntary bankrupt upon a petition filed in this Court on May 17, 1930, and the administration of the estate of said bankrupt was referred generally to Honorable Thomas J. Sheridan, one of the standing referees in bankruptcy of this Court, and a receiver was appointed and qualified on May 17, 1930, and operated the business of the bankrupt until the appointment and qualification of the trustee on July 1, 1930. With the permission and approval of this Court, Louis E. Goodman was regularly appointed and rendered services as attorney for said receiver, in accordance with General Order XLIV, and Reuben G. Hunt was regularly appointed and rendered services as attorney for said trustee. In December, 1931, three matters came on for hearing and decision by said referee: (1) the trustee's second and final account; (2) an application by [2] said Reuben G. Hunt for an allowance of \$5,140.50 to him as compensation for his services as attorney for said trustee; (3) an application by said Louis E. Goodman for an allowance of \$500.00 to him as compensation for his services as attorney for said receiver, which application and the hearing thereon fully complied in all respects with General Order XLII. All three matters, as aforesaid, were regularly heard, and on April 16, 1932, said referee decided them and entered orders as follows: (1) said account was settled; (2) the said application of said Reuben G. Hunt was allowed in part and disallowed in part;

(3) the said application of said Louis E. Goodman was allowed in full.

No petition for review under General Order XXVII, nor any petition for review at all, was ever filed, with respect to either the order settling the account, as aforesaid, or the order allowing the application of said Louis E. Goodman. Neither of those matters was contested before either said referee or this Court. Rule 9 of the Bankruptcy Rules of this Court is as follows:

“A petition for a review by the Judge of an order made by the Referee, as provided in General Order No. XXVII of the General Orders in Bankruptcy, must be filed with the Referee within ten days after the date of notice of such order. For good cause shown the Referee may at any time, within said period of ten days, grant a reasonable extension of time within which a petition for review may be filed, and grant further reasonable extensions within the period of the previous extension.”

No extension of time thereunder has ever been requested or granted, in connection with the orders mentioned in this Statement of the Case.

Said Reuben G. Hunt alone filed, under General Order XXVII, with said referee a petition for review of the order disallowing his application in part, and therein set out, as error complained of, solely and only the disallowance in part of the

ap- [3] plication of him, said Reuben G. Hunt, and praying solely and only for a further allowance to him, and said referee thereupon made his certificate under General Order XXVII. After hearing said review, this Court made the following order on August 12, 1932:

“It is ordered that the account as allowed by the referee be and the same is approved with the exception of the item of \$500 allowed to the attorney for the receiver which is stricken from the account.”

GEO. M. NAUS,
GOODMAN, BACHRACH &
BROWNSTONE,
Attorneys for Appellant.

REUBEN G. HUNT,
Attorney for Appellee.

The foregoing is approved as an agreed statement of the case under Equity Rule 77.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed Oct. 5, 1932, 3:34 P. M.
Walter B. Maling, Clerk. [4]

[Title of Court and Cause.]

MEMORANDUM AND ORDER.

I find, after reviewing the services rendered by the attorney for the trustee of the above entitled

estate and the condition of the estate, that the allowance of fees to the attorney for the trustee by the referee was just and proper.

I notice that \$500 was allowed to the attorney for the receiver for services rendered since the election and qualification of the trustee. Since the account was not contested, undoubtedly the propriety of this allowance was not called to the referee's attention. A receiver in bankruptcy is not a general receiver but a special receiver appointed by authority of statute. Section 2 of the Bankruptcy Act (11 U. S. C. A., Sec. 11). This section provides for the appointment of a receiver until the proceeding is dismissed or the trustee is qualified. The appointment is limited by the terms of the statute. *Booneville National Bank v. Blakely*, 107 Fed. 891; *In the Matter of Empire Finance Corp.*, No. 20,707, in Northern District of California. Therefore upon the qualification of the trustee herein the receiver was automatically divested of authority and power to represent the estate. As such he had no authority to employ counsel and the counsel's fee is not a proper charge against the estate. It is regretted that he can not be compensated for services performed the estate under a misappre- [5] hension as to the authority of his client, but the Court is without jurisdiction to allow such a fee.

IT IS ORDERED that the account as allowed by the referee be and the same is approved with

the exception of the item of \$500 allowed to the attorney for the receiver which is stricken from the account.

Dated this 12th day of August, 1932.

KERRIGAN,
District Judge.

[Endorsed]: Filed Aug. 12, 1932, 12:14 P. M.
Walter B. Maling, Clerk. [6]

[Title of Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 8 pages, numbered from 1 to 8, inclusive, contain a full, true, and correct transcript of certain records and proceedings requested by appellant, in the matter of Henry Duffy Players, a corp., In Bankruptcy, No. 19,335-K, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record is the sum of two dollars and seventy-five cents (\$2.75) and that the said amount has been paid to me by the attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of October, A. D. 1932.

[Seal] WALTER B. MALING, Clerk,
By C. M. Taylor, Deputy Clerk. [9]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes petitioner Louis E. Goodman who has filed herewith a petition for the allowance to him of an appeal from the order of the District Court of the United States in and for the Southern Division of the Northern District of California, made on August 12, 1932, in the matter of Henry Duffy Players, a corporation bankrupt, No. 19,335-K, annulling an allowance of \$500.00 theretofore made to him by the Referee in Bankruptcy of the said District Court in charge of the administration of the estate of the bankrupt for services as counsel for G. A. Blanchard, the receiver in bankruptcy of said estate; and files the following assignment of errors upon which he will rely for the prosecution of the said appeal:

1. Said District Court lacked jurisdiction to make said order in so far as the said petitioner Louis E. Goodman was concerned for the reason that the matter of such allowance was not before the said District for consideration upon a petition

for review filed pursuant to General Order No. 27 of the Supreme Court of the United States relating to bankruptcy or otherwise and said allowance had long prior thereto become a final order of the bankruptcy court by reason of the fact that no such petition for review had ever been filed.

2. The said order is erroneous in that it is predicated upon the proposition that a receiver in bankruptcy is not entitled to have the services of counsel after the appointment and qualification of the trustee in bankruptcy because receivers in bankruptcy must necessarily have the services of counsel in contested matters respecting the settlement of their accounts as was the case here and such accounts may be heard and settled after the appointment and qualification of the trustee in bankruptcy.

WHEREFORE said appellant prays that the said order of August 12, 1932, in so far as it affects him may be reversed.

Dated, August 31, 1932.

GOODMAN, BACHRACH &
BROWNSTONE,
GEO. M. NAUS,
Attorneys for Appellant.

Copy received Sept. 6, 1932.

REUBEN G. HUNT,
Attorney for Appellee.

[Endorsed]: Filed Sept. 7, 1932. Paul P. O'Brien,
Clerk.

At a stated term, to wit, the October term, A. D. 1931, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the seventh day of September, in the year of our Lord one thousand nine hundred and thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

ORDERED petition of Louis E. Goodman for allowance of appeal under section 24b of the Bankruptcy Act, this day filed, submitted to the Court for consideration and decision.

Upon consideration thereof, and the assignment of errors, this day filed, IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the District Court of the United States for the Northern District of California, Southern Division, made on August 12, 1932, be, and the same hereby is allowed, conditioned upon the giving of a cost and supersedeas bond in the sum of Seven Hundred and Fifty Dollars (\$750.00) within ten days from date.

United States of America.—ss.

The President of the United States of America.

To E. C. Street, as Trustee in Bankruptcy of the
Estate of Henry Duffy Players, a Corporation,
Bankrupt, GREETING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear at a United States Cir-
cuit Court of Appeals for the Ninth Circuit, to be
holden at the City of San Francisco, in the State
of California, within thirty days from the date
hereof, pursuant to an order allowing an appeal,
of record in the Clerk's Office of the United States
Circuit Court of Appeals for the Ninth Circuit,
wherein Louis E. Goodman, is appellant, and you
are appellee, to show cause, if any there be, why
the decree or judgment rendered against the said
appellant, as in the said order allowing appeal men-
tioned, should not be corrected, and why speedy
justice should not be done to the parties in that
behalf.

WITNESS, the Honorable CURTIS D. WIL-
BUR, United States Circuit Judge for the Ninth
Circuit, this 8th day of September, A. D. 1932.

[Seal]

CURTIS D. WILBUR,
United States Circuit Judge.

Received a copy of the within citation this 12th
day of September, 1932.

REUBEN G. HUNT,
Attorney for E. C. Street, Trustee.

[Endorsed]: Filed Oct. 5, 1932, 3:34 P. M. Walter
B. Maling, Clerk. [10]

[Title of Court and Cause.]

STATEMENT AND STIPULATION,
Under Rule 23(8).

The errors on which appellant intends to rely are the two assigned, under numbers 1 and 2, in his assignment of errors; and the parts of the record which he thinks necessary for the consideration thereof are as follows:

1. This statement and stipulation.
2. Minute order of September 7, 1932, allowing appeal.
3. Assignment of errors.
4. The following papers from the transcript returned by the Clerk of the District Court: (a) order of August 12, 1932; (b) agreed statement of the case; (c) opinion of the District Judge.

GEO. M. NAUS,
GOODMAN, BACHRACH &
BROWNSTONE,

Attorneys for Appellant.

Stipulated, that the clerk shall print only those parts of the record designated hereinabove.

REUBEN G. HUNT,
Attorney for Appellee.

[Endorsed]: Filed Oct. 17, 1932. Paul P. O'Brien,
Clerk.

[Endorsed]: No. 6960. United States Circuit Court of Appeals for the Ninth Circuit. Louis E. Goodman, Appellant, vs. E. C. Street, as Trustee in Bankruptcy of the Estate of Henry Duffy Players, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 15, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

